In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 6644 of 2006
Date of decision: 14-12-2006

Smt. Mohinder Kaur .....Petitioner

Versus

Smt. Kailash Rani & another .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Mr. S.C.Kapoor, Senior Advocate, with
Mr. Harminderjeet Singh, Advocate, for the petitioner.

VINOD K.SHARMA,J.

The present revision petition has been filed against the order of ejectment passed by the learned Courts below under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short the 'Act') on the ground that the property in possession of the petitioner tenant has become unfit and unsafe for human habitation

In the petition by the landlord-respondents under Section 13 of the Act, it was claimed that major portion of the property had already fallen and the room in possession of the petitioner had also become unfit and unsafe for human habitation. It was further claimed that the property was more than 100 years old and the room in possession of the tenant-petitioner was carved out by the landlord-respondents from the back portion which has already fallen. On the

basis of the evidence led on record, learned Courts below came to the conclusion that the building has become unfit and unsafe for human habitation and ordered the ejectment of the petitioner-tenant from the shop in dispute.

Mr. S.C. Kapoor, Senior Advocate, appearing with Mr. Harminderjeet Singh, Advocate, for the petitioner challenged the findings of the learned Authorities below primarily on the ground that the major potion of the building was demolished by the landlord-respondents and, therefore, no ejectment could be ordered as the landlords could not be allowed to take benefit of their own wrongs. In support of this contention, learned Senior Counsel for the petitioner placed reliance on the judgment of this Court in the case of **Ramji Dass Nirmohi Vs. Gurbux Singh, 1998 HRR 548.**

I have considered the arguments raised by the learned counsel for the petitioner and find no force in the same. It was nowhere proved on record that it was the landlords, who have damaged the property as alleged, rather the documentary and oral evidence on record showed that the building had become unfit and unsafe for human habitation. In this regard, it would be appropriate to reproduce the finding recorded by the learned lower Appellate Court, which reads as under:-

> "RW-4 Hira Lal examined by the tenant has admitted in his cross-examination that he has not gone into the shop in dispute from the last 5/6 years. RW2 Subash Chander

has been examined by the tenant. Subash Chander is the husband of Kailash Rani i.e. landlady and he is the brother of Harvinder Kumar – Power of Attorney of both the land ladies. He has admitted in his cross-examination that now the shop in question is in more 'Khasta Halat' and that the shop in dispute can fall at any time. So, from the perusal of the testimony of both the expert witnesses, photographs produced by both the parties and admission of RW2 that the shop in dispute can fall at any time, I fully agree with the findings of the Ld. Rent Controller that the shop in dispute has become unfit and unsafe for human habitation."

Learned Senior Counsel for the petitioner by making reference to this finding contended that once the report of the Expert was looked into, then presumption had to be drawn that it was the landlords, who demolished the property. However, I find no force in this contention.The Expert was produced by the petitioner,who instead of admitting the damage to the property, gave an opinion that the portion in possession of the tenant was good. This report cannot help the petitioner as the building has to be seen as a whole and not only a part in possession of the tenant. In the present case, the portion in possession of the tenant was also in dilapidated condition and, therefore, the learned Authorities below rightly came to the conclusion

that the building in question was unfit and unsafe for human habitation. This finding of fact recorded by the learned Courts below cannot be said to be perverse so as to enable this Court to interfere in exercise of revisional jurisdiction.

Accordingly, there is no merit in the present revision petition, which is dismissed in limine.

Learned Senior Counsel for the petitioner thereafter prayed that as the petitioner is running business from the disputed portion of the building, she may be granted time to vacate the premises. This request of the petitioner is accepted and she is granted three months' time to hand-over the vacant possession of the property in dispute to the landlord-respondents. This shall, however, be subject to the following conditions:-

(i) That the petitioner would file an undertaking within 15 days from the date of receipt of this order before this Court to the effect that she would hand-over the vacant possession of the tenanted premises to the landlord-respondents on or before 13th of March 2007.

(ii) That she will clear all the arrears of rent and shall continue to pay the rent by 10th of each month in advance during this period.

Dec. 14, 2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**